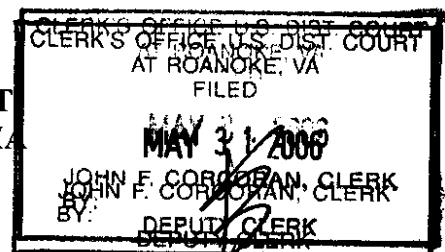


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION



DAMIEN NELSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Civil Action No. 7:06-cv-00329

MEMORANDUM OPINION

By: Hon. James C. Turk
Senior United States District Judge

Petitioner Damien Nelson, a federal inmate proceeding pro se, has submitted to the court a pleading that he styles as "Application and Motion for Relief from Judgment Pursuant to Fed. R. Civ. P. 60(b)." In this motion, Nelson argues that the court has authority under Rule 60(b) to overturn his criminal conviction on the ground that recent law has redefined the offense for which he was convicted and sentenced in 1996. He is mistaken. Upon review of his motion and court records, the court concludes that his motion must be construed as a motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255, and dismissed.

Rule 60(b) is, by definition, a rule of civil procedure. Such rules, designed to govern litigation of civil actions, do not and cannot provide authority for attacking or overturning a criminal judgment. As a motion under Rule 60(b), Nelson's motion fails utterly.

In his motion, Nelson alleges that the court made improper factual findings by a preponderance of the evidence in determining his criminal sentence. Such claims of court error must be brought on direct appeal or in a motion to vacate, set aside or correct sentence, pursuant to § 2255. Court records indicate that Nelson has previously filed a § 2255 motion, Civil Action No. 7:01-cv-00583. Thus, petitioner's current § 2255 motion is a successive one. This court may consider a successive § 2255 motion only upon specific certification from the United States Court

of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. As petitioner has not submitted any evidence at this time that the Court of Appeals has certified him to file a successive petition, this court will dismiss the current petition as successive. An appropriate order shall be issued this day.

The Clerk is directed to send certified copies of this memorandum opinion and the accompanying order to petitioner at his current place of confinement and to counsel of record for the government.

ENTER: This 31st day of May, 2006.



Senior United States District Judge